

ESTTA Tracking number: **ESTTA69449**

Filing date: **03/06/2006**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	JALLATTE S.A.
Granted to Date of previous extension	03/05/2006
Address	RUE DU FORT - BP 5 ST HIPPOLYTE DU FORT, 30170 FRANCE
Correspondence information	Mark Lebow Applicant's Attorney Young & Thompson 745 South 23rd Street Arlington, VA 22202 UNITED STATES mlebow@young-thompson.com Phone:703-521-2297

Applicant Information

Application No	76614332	Publication date	09/06/2005
Opposition Filing Date	03/06/2006	Opposition Period Ends	03/05/2006
Applicant	Breaker Jeanswear Corp. 7150 N.W. 36 Avenue Miami, FL 33147 UNITED STATES		

Goods/Services Affected by Opposition

Class 025. First Use: 1985/00/00 First Use In Commerce: 1985/00/00
All goods and services in the class are opposed, namely: clothing, namely, t-shirts, knit tops, jackets, dresses, pants, capri pants, overalls, skirts, shorts and skorts

Attachments	2006-03-06 Notice of Opposition.pdf (4 pages)
Signature	/Mark Lebow/
Name	Mark Lebow
Date	03/06/2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

JALLATTE S.A.,

Opposer,

v.

BREAKER JEANSWEAR CORP.,

Applicant.

Opposition No.

NOTICE OF OPPOSITION

Opposer, JALLATTE S.A., is a French corporation having a principal place of business at Rue du Fort – BP 5, 30170 St. Hippolyte du Fort, France.

Applicant, BREAKER JEANSWEAR CORP., is a Florida corporation with offices located at 3129 Oak Avenue, Miami, Florida 33133.

Opposer believes that it will be damaged by registration of the mark “JALATE” as shown in Application Serial No. 76/614,332 for goods in International Class 25 and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer has used the mark JALLATTE in commerce on or in connection with boots, shoes, parts of boots and shoes, and safety clothing in the nature of protective boots and/or shoes since as early as 1962 and, in any event, long prior to any use of the mark JALATE by Applicant.
2. Opposer intends to continue use of the mark JALLATTE in commerce in connection with the goods noted in paragraph 1 above.
3. Opposer is also the owner of U.S. Registration No. 1,249,471 on the Supplemental Register for the mark JALLATTE covering “Safety Clothing-Namely, Boots and Shoes for Protection Against Accidents” in Class 9, and for “Boots, Shoes and Leather, Rubber and Plastic Heels and Soles for Boots and Shoes” in Class 25.
4. Opposer has developed extensive goodwill in the United States with respect to its JALLATTE mark.
5. As a result of the expenditure of substantial sums for promotional activities and advertising and/or by virtue of the high quality of its goods, Opposer has garnered a valuable reputation for its JALLATTE mark.
6. As a result of the above uses, Opposer has developed substantial common law rights in its JALLATTE mark.
7. Applicant filed Application Serial No. 76/614,332 on October 1, 2004 seeking to register the mark “JALATE” as a trademark in International Class 25 for “clothing, namely, t-shirts, knit tops, jackets, dresses, pants, capri pants, overalls, skirts, shorts and skorts.”

8. Priority is not an issue. Applicant's asserted date of first use in U.S. commerce of 1985 is subsequent to Opposer's filing date (July 17, 1981), registration date (March 31, 1983) and asserted date of first use in commerce (January 1962), noted in its Supplemental Registration referenced in paragraph 3 above.
9. The mark proposed for registration by Applicant in Application Serial No. 76/614,332 is closely similar in appearance, connotation, sound and commercial impression to the mark JALLATTE used by Opposer in connection with its goods.
10. Opposer avers that the goods described in Application Serial No. 76/614,332 are likely to be advertised and provided, or will be advertised and provided, in similar channels of trade and/or to similar customers as Opposer's goods.
11. Applicant's use of the mark JALATE in connection with the goods described in Application Serial No. 76/614,332 interferes with Opposer's use of its JALLATTE mark and is likely to cause the public to believe that the goods of Applicant originate with Opposer, or vice versa, or that Applicant is owned or controlled by or in some manner affiliated or associated with Opposer, or vice versa, and is otherwise likely to cause confusion, cause mistake or deceive.
12. Any defect, inadequacy or deficiency found in Applicant's goods marketed or otherwise provided under the JALATE mark would reflect negatively upon and seriously injure the reputation and goodwill associated with the goods provided by Opposer and provided in connection with its JALLATTE mark.
13. If Applicant is granted a registration based on Application Serial No. 76/614,332, Applicant would thereby obtain at least a prima facie exclusive right to use the JALATE mark. Any such registration would be a source of damage and injury to Opposer and its customers.

WHEREFORE, Opposer prays that Application Serial No. 76/614,332 will be rejected, that no registration be issued thereon to Applicant, that registration of the mark JALATE for the goods specified therein be denied and refused, and that this opposition be sustained in favor of Opposer.

A duplicate copy of this Notice of Opposition and the appropriate fee is being paid electronically herewith.

Opposer has appointed Robert J. Patch, Andrew J. Patch, Benoît Castel, Thomas W. Perkins, Eric Jensen, Roland E. Long, Jr., who are attorneys admitted to practice in Virginia, and Mark Lebow, an attorney admitted to practice in Florida and New York, all of whom are affiliated with the firm Young & Thompson, 745 South 23rd Street, Arlington, Virginia 22202, as its duly authorized agents and attorneys in the matter of this opposition, with full power of substitution and revocation, to transact all business with the Patent and Trademark Office and elsewhere in the United States courts in connection with this opposition, to sign all papers which may be hereinafter filed in connection with this opposition, and to receive all communications relating to this opposition.

Respectfully submitted,

/Mark Lebow/

Mark Lebow
Attorney for Opposer
Young & Thompson
745 South 23rd Street
Arlington, Virginia 22202
Tel: (703) 521-2297
Fax: (703) 685-0573